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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 175 final.

Brussels, 2 May 1978.

DRAFT COMMISSION DECISION

establishing Community rules for aids and interventions
by Member States in favour of the iron and steel industry

(submitted to the Council by the Commission)

COM(78) 175 final.

COMMUNITY RULES FOR AIDS AND INTERVENTIONS BY MEMBER STATES IN FAVOUR
OF THE IRON AND STEEL INDUSTRY

EXPLANATORY MEMORANDUM

1. Introduction

The characteristics of the crisis facing the steel industry are well known. The adverse conjunctural situation has affected the industry throughout the world but the Community industry has been amongst the most seriously affected as a result of its loss of competitiveness, which is due to certain structural weaknesses and more particularly to the existence of many plants using obsolete equipment and techniques, and of more modern plants which have frequently not reached optimal capacity levels, as well as to the unfavourable location of many plants.

The Commission has already taken action to improve the market situation in the short term by the introduction of minimum prices for certain products and in other cases of guidelines for prices and deliveries within the Community as well as by action to check the adverse effects on the Community price level of imports from third countries. These short-term measures cannot however resolve the deep-seated structural problems and the Commission has therefore also taken steps to prepare a detailed restructuring plan for the industry, a task on which it is currently engaged, and to promote its restructuring by Community aids to investment, pursuant to Article 54 of the ECSC Treaty. It has further sought to mitigate the effects of the restructuring on the industry's workers by expanding its reconversion activities pursuant to Article 56.

It is vital that the implementation of the Community's restructuring policy should not be impeded by measures taken by Member States individually. Equally, however, the Community is not itself in a position to meet all the industry's requirements for assistance. As a counterpart to the initiatives taken by the Commission a framework must now be developed within which national measures will reinforce rather than frustrate action taken at Community level.

The draft Decision of the Commission which would establish such a Community framework for Member States' aids and interventions in favour of the steel industry, is therefore an integral part of the industrial restructuring policy which is being elaborated by the Community.

2. The necessity for a Decision under Article 95, 1

- 1) The gravity of the crisis in the steel industry is such that virtually all community undertakings are making losses and have been doing so for some time. Despite the Commission's efforts to strengthen price levels within the Community the finances of steel undertakings are bound to remain under pressure in the years ahead.

Because of the considerable importance of the industry in the Community's economy as a producer and an employer, Member States will therefore increasingly find themselves obliged to intervene to support the industry both to enable it to survive the crisis and to promote its restructuring. These national aids and interventions will be in the common interest, provided that they contribute to the realisation of Community objectives.

- 2) The ECSC Treaty's provisions on national aids and interventions do not offer the Commission the necessary flexibility in its appraisals of such measures. Article 4 (c) prohibits specific aids and subsidies without any possibility of derogation except in the rare case where an action by a Member State damages its own steel industry. The Commission is then empowered by virtue of the second subparagraph of Article 67 (2), subject of certain conditions, to authorize aids in these circumstances. The other provisions of Article 67 concern actions having an appreciable effect on competition and taken under the Member States reserved powers (i.e. their general economic, industrial, regional, social and other policies). This article empowers the Commission, after consulting the Consultative Committee and the Council, to make recommendations to individual Member States in certain circumstances: those in which an action is liable to provoke a serious disequilibrium or in which it allows special benefits to or imposes special charges on steel undertakings in comparison with the other industries in the same country.

- 3) While the Commission is prepared to use these powers of recommendation where necessary and appropriate it does not consider that they constitute an instrument sufficiently comprehensive and flexible to meet the requirements of the present situation. Recourse to Article 95 is required in order to enable the Commission to ensure that actions taken under reserved powers are compatible with the common interest and to authorize aids and subsidies that would otherwise be prohibited by Article 4 (c) of the Treaty.
- 4) The draft Decision, of course, only applies to aids and interventions in favour of steel undertakings and in respect of those of their activities which are subject to the rules of the ECSC Treaty. Aids whose purpose is to facilitate conversion to products to which the Treaty of Rome applies are not subject to this Decision.

3. The principles of the draft Decision (Article 1)

The objective of the draft decision is, as already indicated, to provide a framework ensuring that national aids and interventions will be compatible with the Community's overall policies for restructuring the steel industry and that they do not distort competition to an extent contrary to the common interest, while at the same time offering Member States the necessary flexibility to cope with a variety of circumstances.

The present legal framework of the Treaty does not afford the flexibility required for these objectives to be attained. It is therefore necessary by means of a Community instrument to create new rules providing, on the one hand, for the supervision and control of aids and interventions in favour of the steel industry, where these are financed from national sources and, on the other hand, for the necessary Community appreciation of such action as Member States may take within their reserved powers and which may have similar effects on competition to aids and interventions.

The draft decision thus makes provision for all aids and interventions, not merely for those that are specific to steel. It should be noted in particular that the terms of Article 1 are such that its provisions apply to:

(i) aids and interventions for regional purposes.

The Commission recognizes the importance of regional aids and interventions for the regional development of the Community. Equally, however, it would question whether such aids and interventions are always in the real interest of the regions concerned when they are accorded to industries in difficulties; certainly there is a strong possibility that they could, in the short term, be at the expense of other regions where the industry is located and whose problems may be even greater. This latter possibility is of particular significance in the case of the steel industry much of whose production is located in aided regions (the Mezzogiorno, Scotland, Wales, Lorraine, Wallonia, the Saar). In the case of an industry, such as steel, which suffers from an excess of productive capacity, it would clearly be unacceptable for Member States to have complete discretion to use their regional aids systems to support increases in the capacity of certain plants, which, were they not located in aided regions, would be subject to control by the Commission. The draft Decision nevertheless provides that, in its appraisals of aids and interventions, the Commission will take full account of regional considerations.

(ii) aids and interventions in favour of undertakings in public ownership.

In the present circumstances of the steel industry, it is extremely unlikely that a private entrepreneur would be willing, or indeed able, to provide finance to this sector, without some inducement in the form of aid or intervention by a Member State. In the case of public undertakings, however, the provision of such finance, on commercial or relatively commercial terms, may be an alternative to the grant of aids or subsidies. To this extent, therefore, it is evident that the provision of such finance must be supervised by the Community.

A failure to submit the financial relationship of the state with its public steel undertakings to the control provided for in the decision would render the latter ineffective and inequitable since certain Member States would in effect be permitted to bypass its provisions.

- (iii) aids and interventions granted not only by central governments but also by local or regional authorities and by parastatal organisations or institutions.

The judgment of the Court of Justice in case 78/76 confirms that the terms employed in Article 1 of the Decision, that is "aids and interventions ... financed or provided by Member States or through State resources", are general and apply to all measures of this kind whether financed by the State itself or by local authorities or parastatal institutions. As in the cases of regional aids and interventions and of publicly-owned undertakings, this general applicability to all public authorities of the draft Decision is essential if the Decision is to be fully effective and not to discriminate against the steel industry in some Member States, since the degree to which aids and interventions are administered by central Governments varies between Member States.

4. The main provisions of the draft Decision

Article 2

This article concerns aids and interventions in support of investment by the steel industry.

Aids and interventions would be restricted to investment programmes, or projects forming part of such programmes, which have been notified to the Commission as required by Decision no 22-66 of the High Authority, as amended by Decision no 2237/73 (ECSC) of the Commission. These Decisions unless modified in the future, require undertakings to notify to the Commission:

- (i) all investment programmes for steel furnaces or for converters for steel production; and
- (ii) any other investment programmes concerning new plant or replacement or conversion work whose estimated total cost exceeds 5 million units of account.

The bulk of programmes which do not meet either criterion involves

programmes of routine replacement and maintenance and should not benefit from aids or interventions. The Commission considers that as a general principle, aids and interventions should not be used to support routine investment of the kind that would in any case be carried out by the undertaking concerned.

The Commission would examine each aid or intervention proposal on the basis of the Decision's objectives set out in Article 1 (1) and of the conformity of the investment programme with the General Objectives for steel, taking account of any reasoned opinion issued by it on the programme in question. The amount and intensity of aid or intervention would moreover have to be justified by sectoral or regional considerations. (The aids ceilings contained in the coordination solution for general regional aids systems would of course have to be respected.)

Article 3

This article authorises aids and interventions to compensate undertakings for the social and other costs incurred by them in respect of the total or partial closure of steel plant.

The Commission would monitor the effects of this general authorization through a reporting procedure under which Member States would inform it twice a year after the event of any decisions taken.

Article 4

This article concerns aids and interventions granted over a period of time to enable undertakings or plants which are not competitive to maintain production or to reduce it in an orderly manner. Aids and interventions of this type are necessary if a drastic rundown of the steel industry, with very adverse effects on employment, is to be avoided. The objective of these aids and interventions must be to ensure an orderly adjustment of productive capacity to demand for the industry's products, both in global terms and for individual products.

Aids and interventions of this kind should therefore not be such as simply to preserve existing structures, which would entail particularly serious distortions of competition, but should only be given subject to the necessary restructuring being undertaken and should be limited to that which is necessary to enable the restructuring to be carried out. The restructuring must be compatible with the General Objectives for Steel.

The criteria set out in this article are based on these considerations. In view of the importance of these aids and interventions for employment the Commission will take particular account of regional problems in its appraisals of plans for aids and interventions under this article.

Article 5

This article provides for the extreme case in which a Member State has to intervene on an emergency basis to rescue an undertaking whose insolvency is imminent. Aids and interventions for this purpose are, as in the case of those provided for in Article 4, likely to have particularly adverse effects on competition by preventing the disappearance of the least competitive capacity in circumstances where capacity has to be reduced in aggregate.

The article therefore provides that such aids and interventions should be limited to cases where they are required in order to cope with acute social problems and that they should be a first step towards a more definitive solution to the undertaking's problems. This solution would in general involve either the closure of the enterprise or its restructuring. In addition, in order to avoid distortions of competition subsequent to the rescue, the intensity of aids and interventions should be as low as possible. The article therefore provides that action should normally consist of a guarantee or of a loan at a commercial rate of interest.

Article 6

The first paragraph of this article establishes a procedure for examining those aids and interventions on which the Commission must take position prior to their implementation. This procedure is essentially the same as that provided for in Article 93 of the EEC Treaty.

It will be noted that the Commission is required to state its position as rapidly as possible having regard to the urgency of each case. This provision is included^{especially} for the case when emergency measures have to be taken pursuant to Article 5.

The second paragraph empowers the Commission to require repayment of aids or interventions put into effect contrary to the provisions of the

Decision; this applies to the failure to respect either the criteria or the procedures of the draft Decision.

Article 7

This article institutes similar procedures and criteria for all aids and interventions which Member States might wish to introduce .

but which do not meet the particular provisions of the draft Decision.

Article 8

This article provides for regular consultations between the Commission and the Member States on the operation of the Decision and on individual aid and intervention plans.

Article 9

This article provides for the draft Decision to be in force for a period of about three years. At the end of this period it may be appropriate to extend its validity or to amend it in the light of experience and of the progress achieved in restructuring the industry.

DRAFT

COMMISSION DECISION

establishing Community rules for aids and interventions by Member States
in favour of the iron and steel industry

The Commission of the European Communities,

Having regard to the Treaty establishing the European Coal and Steel
Community, and in particular Articles 2 to 5, 46, 54, 56, 67 and to the
first and second paragraphs of Article 95 thereof,

whereas

Having consulted the Consultative Committee and with the unanimous assent
of the Council,

HAS ADOPTED THIS DECISION:

Article 1

1. The orderly functioning of the common market requires that the adjustment of the steel industry's capacity to prospective demand is made in an orderly manner and that the industry's competitiveness is restored by the extension, modernisation and rationalisation of those plants offering the best prospects of viability and the closure of other plants.
2. Aids and interventions in favour of the steel industry, financed or provided by Member States or through State resources in any form whatsoever, may be considered compatible with the orderly functioning of the common market if they satisfy the provisions of this Decision and if they do not affect competition and trade between Member States to an extent contrary to the common interest. Such aids and interventions shall only be put into effect in accordance with the procedures established herein.

Article 2

1. Aids and interventions in support of investment in the steel industry may be considered compatible with the orderly functioning of the common market if they meet the following criteria, that is to say
 - the Commission has received prior notification of the investment programme concerned as required by High Authority Decision No 22-66 of 16 November 1976 on information to be furnished by undertakings about their investments (1), as amended by Commission Decision No 2237/73 (ECSC) (2) or by any subsequent Decision;
 - the amount and intensity of aid or intervention in any form whatsoever are justified either by the importance of the restructuring effort involved or by the structural problems of the region where the investment is to be undertaken and are limited to that which is necessary for this purpose;
 - the investment programme conforms to the General Objectives for steel, having regard to any reasoned opinion that the Commission may have issued on the investment programme concerned.

(1) OJ No 219, 29.11.1966, p. 3728/66

(2) OJ No L 299, 17.8.1973, p. 28

2. The net grant equivalent of aids and interventions shall be calculated in the manner set out in the Commission's Communication to the Council of 23 June 1971 on General Regional Aids Systems (1) subject to any amendments subsequently made to this method of calculation.

Article 3

1. Aids and interventions to defray the costs resulting from the partial or total closure of steel plants may be considered compatible with the orderly functioning of the common market.
2. The costs eligible for such aids and interventions shall be the following:
 - Payments to workers made redundant or retired before legal retirement age, where such payments are not to be met by contributions pursuant to Article 56 (1) (c) or (2) (b) of the Treaty;
 - payments due to third parties in respect of the termination of contracts, in particular for the supply of raw materials;
 - expenditure incurred for the redevelopment of the site of closed steel plant for alternative industrial use.
3. Member States shall, with effect from, submit six-monthly reports to the Commission on aid or intervention decided upon in the course of the previous six months. These reports shall contain the following information on each closure:
 - an identification of the undertaking or plant closed;
 - the amount and precise nature of eligible expenditure due to the closure;
 - the amount, nature and other particulars of the aid or intervention.

(1) OJ No C 111, 4.11.1971.

Article 4

1. Aids and interventions to facilitate the continued operation of certain undertakings or plants may be considered compatible with the orderly functioning of the common market if they meet the following criteria, that is to say
 - they form an integral part of a restructuring programme designed to assist the production unit in question to become competitive and able to operate without aid, the said restructuring programme being compatible with the General Objectives for steel;
 - they are of limited duration or progressively reduced at a sufficient rate for them to be eliminated within a reasonable period, having regard to the restructuring programme undertaken;
 - they are limited in intensity and amount to that which is absolutely necessary in order to enable continued operation during the period of the restructuring; and
 - they do not, in the case of support tariffs, appreciably affect competition on the transport market concerned.
2. In its examination of each proposal the Commission shall take account of the problems facing the production unit or units in question and the region or regions concerned.

Article 5

Emergency aid and intervention intended as a temporary solution for the rescue of an undertaking pending a definitive solution to the problems of the undertaking concerned may be considered compatible with the orderly functioning of the common market only in cases where they are required in order to cope with acute social problems. Other than in exceptional and fully justified cases, such measures shall be in the form of a state guarantee or of a loan at a commercial rate of interest.

Article 6

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aids and interventions pursuant to Articles 2, 4 and 5. The Member State concerned shall only put its proposed measures into effect with the approval of and subject to

any conditions laid down by the Commission. The Commission shall make its views known as soon as possible having regard to the urgency of the case. If, after giving notice to the parties concerned to submit their comments, the Commission finds that the aid or intervention is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. When a period of two months from the date of receipt of the notification of the plan in question has expired without the Commission having initiated the procedure herein provided for or otherwise having made its views known, the measures may be put into effect, provided that the Member State has given prior notice to the Commission of its intention so to do.

2. Where a Member State has put into effect aids or interventions contrary to the provisions of this Decision, the Commission may by means of a decision addressed to that State require the repayment or other withdrawal of the aid or intervention in question.

Article 7

1. All plans proposed by Member States which involve an action within the meaning of Article 67 (1) of the Treaty shall be notified to the Commission in sufficient time to enable it to submit its comments thereon. The proposed plans shall only be put into effect with the approval of and subject to any conditions laid down by the Commission.
2. The Commission shall evaluate such plans in the light not only of Article 67 (2) and (3) of the Treaty, but also of the general objectives and, as appropriate, of the particular provisions of this Decision.
3. When a period of two months from the date of receipt of the notification of the plan in question has expired without the Commission having initiated the procedure provided for in paragraph 4 or otherwise having made its views known, the measures in question may be put into effect, provided that the Member State has given prior notice to the Commission of its intention to do so.
4. Where the Commission reaches a negative opinion on the plans in question, it may, after consultating the Consultative Committee and the Council, address the necessary recommendation to the Member State concerned.

Article 8

The Commission shall prepare regular reports on the operation of this Decision for discussion with experts from the Member States. It may also seek the views of these experts in the case of the more important aid and intervention plans notified to it before taking a position on these plans.

Article 9

This Decision shall apply until 30 June 1981.

Article 10

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at

1978

For the Commission